

**MINUTES OF THE MEETING
OF THE
LOUISVILLE METRO PLANNING COMMISSION**

June 7, 2007

DOCKET NO. 9-10-07 & 10-06-07

Project Name:	The Villas at Orell Station
Location:	7400 W. Orell Road Louisville, KY 40272
Owner(s):	TSB Development, Inc. 920 Dupont Road Louisville, KY 40207
Applicant:	Kenneth Thieneman TSB Development, Inc. 920 Dupont Road Louisville, KY 40207
Representative:	Michael F. Tigue, Attorney Middleton Reutlinger 2500 Brown & Williamson Tower Louisville, KY 40202
Engineer:	Erik Merten Mendel Scott & Associates, Inc. 4545 Bishop Lane, Suite 200 Louisville, KY 40218
Project Size/Area:	40.40 acres
Jurisdiction:	Louisville Metro
Council District:	14 – Bob Henderson
Staff Case Manager:	Brian Davis, AICP, Planner II

Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the cd of the June 7, 2007 proceedings.

SUMMARY OF STAFF PRESENTATION:

05:29:57; The applicant is proposing to change the zoning from R-4 to R-5A and proposing to develop 168 dwelling units on the site. A summary of this request was presented by Brian Davis using a PowerPoint presentation which included a zoning map showing the area around the site and photos of the site and surrounding properties. Staff discussed the proposed use of the site, traffic concerns heard at the LD&T Committee, compatibility in regards to the Comprehensive Plan Review and improvements that the applicant plans to make.

The following spoke in favor of this request:

Michael Tigue
2500 Brown & Williamson Tower
Louisville, KY 40202

Ken Thieneman
833 Valley College Drive
Louisville, 40272

Mendel Scott & Associates
4545 Bishop Lane
Louisville, KY 40218

The following spoke in opposition:

The following spoke as interested parties (other):

Leslie Barras
River Fields
643 W. Main Street
Louisville, KY 40202

SUMMARY OF TESTIMONY OF PROPONENTS:

05:37:22 Michael Tigie, applicant's representative presented his case using a Power Point presentation showing site elevation maps, and renderings on the patio homes. A suggested photo of a porch enclosure was shown. The history of the development was explained with regards to neighbor's suggestions and improvements have been made. Open space was pointed out on the plan with suggestions of usable amenities to be added with a bond for the owners. Binding elements were suggested.

05:45:53 Ken Thieneman, member of TSB Development answered the commissioner's questions regarding the bond being placed for the purpose of amenities. The amenities will be built as the patio homes are built dependant upon what the buyers want.

There was discussion regarding the bond set aside for amenities or setting it up as a binding element.

Mr. Tigie presented his Summary of Testimony and Findings of Fact. They have been submitted and are part of the file.

SUMMARY OF TESTIMONY OF OPPONENTS:

SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

05:55:09 Leslie Barras, Associate Director of River Fields a land and river conservancy organization wants a binding element regarding an easement to the River Levy Trail, and landscaping. The levy trail and preserving and enhancing the qualities of River Road are part of the landscape plan focal points of a land use document put in place in the mid '90's as a part of Cornerstone 2020.

REBUTTAL:

BUSINESS SESSION:

In a business session subsequent to the public hearing on this request, the Commission took the following action.

06:02:06 There was discussion about the amenities and bonding of the funds.

06:02:51 Compatibility along the River Corridor was brought up and an easement discussed.

06:04:23 Binding elements were discussed.

06:06:20 Michael Tigie answered questions regarding binding elements, adding and amending of.

06:07:30 A new version of the binding elements were passed around to the commissioners.

06:08:19 A motion was made by Commissioner Hamilton to approve a request for the change in zoning from R-4 single family to R-5A multi-family residential at 7400 West Orell Road based on the testimony, staff report, findings of fact in addition that it meets the land development code and the comprehensive plan. The reasons cited are; The design of the open space, it is usable open space, the compatibility, the plan has incorporated the Levy Trail Development, mobility and recreation and overall community plan.

Now therefore be it:

RESOLVED, that the Louisville and Jefferson County Planning Commission does hereby **RECOMMEND** to Louisville Metro Government that the change in zoning from R-4 to R-5A on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners, Howard, Ernst, Abstain, Hamilton, Queenan and Fleischaker.

NO: No One.

NOT PRESENT FOR THIS CASE: Commissioners, Storm, Wells-Hatfield, Blake and Carlson.

ABSTAINING: No one.

06:10:46 A motion was made by Commissioner Hamilton to approve the subdivision plan because it meets the Land Development Code. To include the binding elements proposed today and to amend binding element 13.

RESOLVED, That the Louisville Metro Planning Commission does hereby **APPROVE** the subdivision development plan **SUBJECT** to the following binding elements:

Binding Elements

1. The development shall be in accordance with the approved District Development and Preliminary Subdivision Plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. No further subdivision of the land into a greater number of lots than originally approved will occur without

approval of the Planning Commission. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.

2. The applicant shall submit a plan for approval by Planning Commission staff showing trees/tree masses to be preserved prior to beginning any construction procedure (i.e. clearing, grading, demolition). Adjustments to the tree preservation plan which are requested by the applicant may be approved by Planning Commission staff if the revisions are in keeping with the intent of the approved tree preservation plan. The plan shall exhibit the following information:

- a. Proposed site plan (showing buildings, edges of pavement, property/lot lines, easements, existing topography, and other significant site features (LOJIC topographic information is acceptable).
- b. Preliminary drainage considerations (retention/detention, ditches/large swales, etc.).
- c. Location of all existing trees/tree masses existing on the site as shown by aerial photo or LOJIC maps.
- d. Location of construction fencing for each tree/tree mass designated to be preserved.

3. Before any permit (including but not limited to building, parking lot, change of use, site disturbance permit) is requested:

- a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses and the Metropolitan Sewer District.
- b. A major subdivision plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
- c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
- d. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning & Design Services.

4. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

5. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any

grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.

6. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.

7. All plans setting out Tree Canopy Protection Areas (TCPAs) must contain the following notes:

a. Tree Canopy Protection Areas (TCPAs) identified on this plan represent individual trees and/or portions of the site designated to meet the Tree Canopy requirements of Chapter 10 Part 1 of the Land Development Code and are to be permanently protected. All clearing, grading and fill activity in these areas must be in keeping with restrictions established at the time of plan approval. As trees within TCPAs are lost through natural causes, new trees shall be planted in order to maintain minimum tree canopy as specified on the approved development or preliminary subdivision plan.

b. Dimension lines have been used on this plan to establish the general location of TCPAs and represent minimum distances. The final boundary for each TCPA shall be established in the field by the applicant, developer, or property owner to include canopy area of all trees at or within the dimension line.

c. Tree protection fencing shall be erected around all TCPAs prior to site disturbance to protect the existing tree stands and their root systems. The fencing shall be located at least 3 feet beyond the edge of the tree canopy and shall remain in place until all construction is completed. When trees must be removed, the fence shall be relocated to protect all remaining trees within that TCPA.

d. No parking, material storage, or construction activities are permitted within the TCPAs beyond that allowed for preliminary site investigation work.

e. Clearing necessary to provide access for survey work, rock soundings or other usual and customary site investigations shall be permitted prior to Site Disturbance Approval. Preliminary site investigations shall be carefully planned to minimize the amount of clearing required. Clearing should follow proposed roadway centerlines and should not result in a clear access way of more than twenty (20) feet in width. Cleared access ways beyond proposed roadways to assess individual lots shall not exceed twelve (12) feet in width or encroach into any proposed open space lots. No trees exceeding eight (8) inches in diameter measured at breast height (DBH) shall be removed without prior approval by DPDS.

8. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission.
 - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing responsibilities for the maintenance of common areas, open space, TCPAs, WPAs.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.
9. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
10. All street signs shall be installed by the Developer, and shall conform with the Manual on Uniform Traffic Control Devices (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
11. Trees will be preserved and/or provided on site as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the LDC. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
12. The materials and design of the proposed structures shall be substantially the same as depicted in the rendering as presented at the June 7, 2007 Planning Commission meeting.
13. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall (1) provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association

account and (2) provide public amenities in the designated open space areas to be reviewed and approved by the staff Landscape Architect.

14. The signature entrance plan shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
15. The applicant shall provide a wetlands determination letter from the US Army Corps of Engineers for this site prior to any clearing, grading or construction. If wetlands are identified, the applicant shall demonstrate to the Planning Commission that the wetlands on site will be preserved or shall revise the plan to mitigate any impact on the wetlands. The location of any identified wetlands and associated buffers must be identified on construction plans and/or record plats.
16. The applicant shall obtain approval of a detailed landscape plan for the 50-foot Landscape and Variable Berming Area along Lower River Road. The landscape buffer area shall be maintained by the property owners association. The landscape plan shall be submitted for review and approval by DPDS staff prior to record plat approval.
17. The applicant shall submit a landscape plan for approval by Planning Commission staff showing plantings and/or other screening and buffering materials to comply with the Chapter 10 of the Land Development Code prior to recording the record plat. The applicant shall provide the landscape materials on the site as specified on the approved Landscape Plan prior to issuance of Certificates of Occupancy for the site.
18. The applicant shall install signs, approved by the Metro Public Works Dept., which indicate the future extension of the public right of way for Street A. Such signs shall be installed prior to release of bonds for the installation of the street infrastructure.
19. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
20. Developer shall provide irrigation systems to ensure that the signature entrances to be located along West Orell Road and Lower River Road are properly watered.
21. The applicant shall provide a 20-foot pedestrian easement to Louisville Metro for public access to extend the Orell Road sidewalk from Lower River Road west along the northern property line of Tract 5 to the Ohio River Levee Trail to be recorded on the record plat. Developer is not responsible for the building of the sidewalk.

22. The applicant agrees to replace perimeter plantings located along Orell Road and Lower River Road for a period of 5-years after planting of said materials.

The vote was as follows:

YES: Commissioners, Howard, Ernst, Abstain, Hamilton, Queenan and Fleischaker.

NO: No One.

NOT PRESENT FOR THIS CASE: Commissioners, Storm, Wells-Hatfield, Blake and Carlson.

ABSTAINING: No one.